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Part III

Department of Education

34 CFR Part 682

Federal Family Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AC21

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Program. The Federal Stafford Loan, the Federal SLS, the Federal PLUS and the Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation Loan programs. The Secretary is making changes to the FFEL Program regulations to conform the FFEL program regulations with regulations and policies in effect in the William D. Ford Federal Direct Student Loan Program, hereinafter referred to as the Direct Loan Program.

EFFECTIVE DATE: These regulations take effect on July 1, 1996. However, affected parties do not have to comply with the information collection requirements in sections 682.207, 682.209, 682.210, 682.211, 682.401, 682.412, 682.603, 682.604, and 682.605 until after the information collection requirements contained in these sections have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Patricia Newcombe, FFELP Policy Section Chief, or Barbara Bauman, FFELP Program Specialist, Loans Branch, Policy Development Division, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, S.W. (room 3053, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is amending 34 CFR Part 682 of the Department's regulations to adopt certain policies and procedures that have been used in the Direct Loan Program.

On September 21, 1995, the Secretary published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (60 FR 49130) proposing changes to the FFEL regulations to conform with certain regulations and policies in the Direct Loan program, wherever possible, to provide a consistent approach in both programs. Many of the proposed changes included in the NPRM were identified by commenters in response to an earlier NPRM, published on October 7, 1994, also intended to conform the two loan programs, but were outside the scope of the proposals in that NPRM. In the final regulations published on November 29, 1994, the Secretary promised to evaluate the merits and implications of these additional proposals and include some of them in future regulations. These final regulations reflect many of those proposals. These regulations contain clarifying changes to certain existing provisions of the FFEL program regulations.

The NPRM published for Part 682 in the Federal Register on September 21, 1995 (59 FR 49130–49131) included a discussion of the major issues surrounding the proposed changes, and the discussion will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

- Clarification of the definition of satisfactory repayment arrangements for a borrower to renew eligibility for Title IV student financial assistance (page 49130);
- Borrower eligibility for a FFEL Consolidation loan for a borrower in default status (page 49130);
- Codification of the existing FFEL policy to allow a loan to be disbursed in a single installment under certain circumstances (page 49130);
- Clarification of late disbursement provisions under documented exceptional circumstances in sections 682.207(d)(2)(iii) and 682.604(e)(3) through amendments to those provisions (page 49130);
- Lender application of borrower loan payments and treatment of prepayments (page 49130);
- Clarification of deferment eligibility for a borrower in default status (page 49131);
- Extension of administrative forbearance to a borrower who ends an authorized deferment period in delinquent status (page 49131);
- Treatment of loan insurance premiums when a school refunds a loan or a portion thereof to a lender on behalf of a borrower (page 49131);
- Treatment of payments received after loan discharge (page 49131);
- Minor changes to provisions governing school loan certification (page 49131); and
- Technical changes to conform provisions governing a school's determination of a borrower's withdrawal with the refund provisions of section 668.22(j) (page 49131).

Substantive Revisions to the Notice of Proposed Rulemaking

Section 682.207 Due Diligence in Disbursing a Loan

The final regulations reflect an additional provision that allows a single installment containing more than one loan disbursement to be made prior to the midpoint of the loan period if the date of the scheduled disbursement coincides with the beginning of the next scheduled term for which the school has requested a disbursement as provided for under law.

Section 682.209 Payment Application and Prepayment

The final regulations allow a lender to use a statement included in the borrower's monthly billing statement or coupon book, in lieu of a separate notice, to inform a borrower who submits full payments in excess of the scheduled payment amount (without instructions to the lender) regarding how those payments will be credited to the borrower's account and how that crediting affects the borrower's next scheduled due date for payment.

Section 682.211 Forbearance

The Secretary has changed the regulations to authorize lenders to grant administrative forbearance to borrowers to cover any period of delinquency that may exist after the close of a period of mandatory forbearance, in addition to the close of an authorized deferment period.

Section 682.607 Payment of a Refund to a Lender

The final regulations include a change to section 682.607(c)(1) to clarify the interaction between sections 682.605 and 682.607 and 668.22(j) of the General Provisions regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 40 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are generally not addressed.

General

Comments: Similar to the comments received in response to the October 7, 1994 NPRM to conform the FFEL and Direct Loan programs, some commenters suggested changes to the FFEL program regulations that were not included in the NPRM. Some of the changes had nothing to do with conforming the two loan programs. For example, one commenter suggested that the Secretary revise the provisions in section 682.411(c) to change the time frame within which a lender must send the first notice of delinquency to a borrower. Some of the commenters repeated the suggestions made in response to the October 7, 1994 NPRM to conform the Direct Loan program regulations to the FFEL program regulations by incorporating into the Direct Loan regulations the various requirements in the FFEL regulations for documenting deferment and forbearance eligibility, tracking deferments with statutory time maximums, and backdating the start of deferment eligibility. Additionally, these commenters recommended that FFEL regulations be revised to provide an extended repayment option to FFEL borrowers, and to eliminate the regulatory requirement in section 682.209(a)(6)(ii) that if a borrower chooses a graduated or income-sensitive repayment schedule, the lender may not provide the borrower with a repayment schedule that contains any single installment that is more than three times greater than any other installment.

Discussion: The Secretary does not believe that he currently has the statutory authority to provide through regulations additional repayment options for FFEL borrowers. Because of the constraints presented by the statutory 10-year maximum time frame for repayment of most FFEL program loans, the Secretary also does not believe that it is advisable from a consumer protection standpoint to delete the provision that restricts a lender's ability to establish a repayment schedule that would provide for payments that are three times or more what the borrower's normally scheduled payment would be. The Secretary does not believe that an FFEL borrower is well served by establishing a graduated or income-sensitive repayment schedule that provides low payments initially only to lead to balloon payments that the borrower is unable to meet later in the repayment period despite the use of authorized forbearance. The Secretary also wishes to reiterate what he said in the November 29, 1994 final regulations in response to commenters who indicated that they believed the Secretary is required to make the regulations and processes in the Direct Loan program strictly conform to the FFEL regulations. The Secretary continues to disagree with these commenters. There is no legal requirement that the Secretary issue regulations to regulate internal agency processes in the Direct Loan Program. The Department continues to assure FFEL program participants that policies and procedures in the administration of the Direct Loan program are consistent with FFEL regulatory requirements to the extent practicable. Moreover, the Secretary is committed to continuing to examine areas that affect substantive or procedural rights of program participants that may require additional regulations to ensure conformity between the programs. In regard to the proposal to change the time frame for a lender to send the first notice of delinquency to a borrower, the Secretary does not consider this recommendation appropriate for this regulations package because it has nothing to do with conformity between the FFEL and Direct Loan programs. However, the Secretary will consider this proposal for future regulations.

Section 682.200 Definitions

Comments: Most commenters agreed with the Secretary's decision to clarify that a borrower may make satisfactory repayment arrangements on a defaulted FFEL debt for purposes of regaining Title IV eligibility only once. A couple of commenters urged the Secretary to allow a lender to make documented exceptions to this requirement. Many commenters recommended that the Secretary retain the terms ''consecutive'' and ''voluntary'' in current regulations to describe the series of full monthly payments a borrower must make to regain eligibility. The commenters believe it is necessary to clarify that a borrower cannot regain eligibility through a lump sum payment and that payments secured through involuntary means, such as wage garnishment or litigation, do not count as one of the six required payments. Several commenters also wanted the Secretary to clarify that the restriction on a borrower in default status regaining Title IV eligibility only once did not apply to that borrower's ability to make payments sufficient to move out of default status on a loan.

Discussion: The Secretary agrees with the commenters that retaining the terms ''consecutive'' and ''voluntary'' to describe the full payments that must be made by the borrower to regain eligibility for Title IV student assistance is essential for the reasons suggested by the commenters. These terms were dropped from the NPRM proposal inadvertently. The Secretary does not agree with the recommendation that the regulations should be revised to authorize lenders to allow a borrower to renew eligibility more than one time under certain circumstances. This one-time restriction is statutory. The Secretary wishes to clarify that this one-time restriction on regaining eligibility in no way restricts the same borrower from bringing a loan out of default status more than once.

Changes: A change has been made. The terms ''consecutive'' and ''voluntary'' have been reinserted into the definition to modify the consecutive full payments that must be made by the borrower to regain eligibility.

Section 682.201 Eligible Borrowers

Comments: Many commenters did not support the proposal to allow a borrower to include a defaulted loan in an FFEL Consolidation loan simply by agreeing to repay the Consolidation loan under an income-sensitive repayment plan rather than by making the currently required series of three consecutive payments on the defaulted loan. The commenters also felt strongly that the similar borrower option that exists in the Direct Loan program should be deleted from regulations. These commenters believe that such a borrower should be required to make actual payments on the defaulted loan to demonstrate an intent and ability to repay the loan before the borrower is granted an additional extension of federal credit in the form of a Consolidation Loan and, possibly, additional Title IV student assistance to return to school. These commenters also believe that this policy encourages the ''gaming of the [student loan] system'' by allowing a borrower who has already defaulted on one or more loans to avoid making any payments on any Title IV student loan debt for a considerable period of time if the borrower returns to school. One of these commenters pointed out that if such a borrower cannot afford to make the three ''reasonable and affordable'' payments on the defaulted debt, they would be equally unable and unlikely to make scheduled payments on the Consolidation loan. A couple of other commenters recommended that the regulations be revised to retain the three

payment requirement, with the lender authorized to waive the requirement based on documented exceptional circumstances if the borrower demonstrates a willingness and ability to repay the Consolidation loan. Some commenters supported the provision as proposed in order to maintain parity between the FFEL and Direct Loan programs, but some of those commenters questioned how the holder of the loan would know or be able to verify that a borrower has agreed to repay the loan under an income-sensitive repayment plan.

Discussion: The Secretary acknowledges the commenters' concerns regarding providing this option to borrowers already in default on an FFEL program loan. However, the Secretary believes that a significant number of borrowers in the past have defaulted because they could not afford to make required loan payments. When a borrower consolidates a defaulted loan or loans under an income-sensitive repayment plan (or, in the Direct Loan program, under an income-contingent repayment plan) the amount the borrower will be required to repay will be one the borrower can afford. The Secretary believes that an income-sensitive payment amount coupled with the extended repayment period generally available in the FFEL Consolidation loan program, significantly lessens the risk that the borrower will default again. The Secretary also does not believe that three consecutive monthly ''reasonable and affordable'' payments from the borrower, which could be as low, for example, as $2 per month, necessarily is a more significant indicator of whether a borrower will default on the new Consolidation loan. It is correct that borrowers paying off defaulted loans through loan consolidation regain immediate eligibility for additional Title IV student assistance and perhaps represent a slightly greater risk of default on an even larger debt load. However, this risk was created when Congress amended the HEA to allow borrowers to repay defaulted loans through a Consolidation loan. The Secretary's decision to allow defaulted borrowers to receive a Consolidation loan by agreeing to repay the loan through an income-sensitive repayment arrangement does not significantly increase that risk, and in fact, is likely to reduce defaults. The Secretary believes that borrowers consolidating their defaulted loans and regaining eligibility for Title IV student assistance in order to obtain additional education or training are worth the risk if this second chance leads to gainful employment that will ultimately translate into greater returns to the FFEL program and the federal taxpayers.

Mindful of the unease with which many in the student aid community view this conforming change in FFEL regulations, the Secretary is committed to monitoring the repayment records of these borrowers through the use of the National Student Loan Data System over the next few years. If the repayment patterns of such borrowers in the FFEL and Direct Loan programs reach an unacceptable level of repeat defaults by these borrowers, the Secretary will reconsider this policy in the FFEL and Direct Loan programs.

With regard to the question about how a loan holder asked to provide a certification to the consolidating lender is to know or verify that the borrower has agreed to an income-sensitive repayment plan option, the Secretary notes that it is the obligation of the consolidating lender to determine if the borrower qualifies for the consolidation loan. The consolidating lender will have to determine whether the borrower has chosen an income-sensitive repayment plan or needs to make the required monthly payments to the holder of the defaulted loan. The Secretary also wishes to remind those commenters who expressed concern about this approach that lenders in the FFEL program always have the option not to make an FFEL Consolidation loan.

Changes: None.

Section 682.207 Due Diligence in Disbursing a Loan

Section 682.207(c)(4)

Comments: All of the commenters agreed with the proposal to codify into the FFEL regulations the existing policy that allows a lender to include more than one disbursement of a multiply-disbursed loan in the same installment scheduled to be sent to the school if the midpoint of the loan period has expired when the first disbursement is scheduled to be made. Several commenters, however, asked that the provision be revised to reflect the exception provided in the law for term-based schools that allows a second or subsequent disbursement to be made prior to the mid-point of the loan period if that is necessary to coincide with the school's next scheduled term. The commenters pointed out that the proposed rule would prevent a term-based school from receiving two disbursements in a single installment if the start of the next scheduled term was before the mid-point of the loan period. Another commenter asked that the phrase ''for which the loan was made'' be inserted after the phrase ''loan period'' to clarify what the midpoint is based on.

Discussion: The Secretary agrees with the commenters that these revisions to the proposed provision are warranted.

Changes: Section 682.207(c)(4) has been revised to provide that such a single installment can be made on the earlier of the mid-point of the loan period for which the loan was made or the beginning of the school's next scheduled term.

Section 682.207(d)(4)

Comments: All the commenters endorsed the clarifying changes made to the late disbursement provisions in section 682.207(d)(4) and corresponding changes made in section 682.604. One commenter suggested an additional change to section 682.207(d)(2)(iii) to clarify that a lender is not required to wait for notification from the school but may presume that exceptional circumstances exist when making a disbursement from the 61st day through the 90th day after the date the student ceased enrollment on at least a half-time basis or the expiration date of the period of enrollment for which the loan was intended. Upon receipt of the disbursement, the school would be required to determine and document in the student's file that exceptional circumstances existed and deliver the loan proceeds or return the disbursement to the lender.

Discussion: The Secretary agrees that this further clarification is useful. The Secretary believes these procedures for lender and school handling of a late disbursement during this period will be simple and efficient for both the lender and school.

Changes: Section 682.207(d)(2)(iii) has been revised to reflect the respective lender and school responsibilities and processes for handling late disbursements during the last 30 days of the 90-day period during which late disbursements may be made.

Section 682.209(b) Payment Application and Prepayment

Comments: One commenter recommended an additional change to section 682.209(b)(1) to clarify that a lender has the option to apply any payment to late charges, collection costs, outstanding interest, and outstanding principal in whatever order the lender chooses. The commenter believes that the provision, as currently written, requires application of payments first to late charges and collection costs, then to outstanding interest, and finally to outstanding

principal. Most commenters supported the reduction (from three to one) in section 682.209(b)(2)(ii) of the number of full excess payments a lender must receive before the lender, absent instructions from the borrower, is authorized to interpret the borrower's intent on the handling of the prepayment and to apply them to future installment payments on the loan. Some commenters, however, objected to changing what had been a lender option in the handling of prepayments submitted without borrower instructions to a requirement that the lender treat them as intended for future installments. These commenters believe that the lender is in the best position to review the borrower's repayment pattern and to determine the borrower's intentions in making multiple payments. Several commenters also noted that they interpreted the prepayment provision of (b)(2)(ii) to apply to multiple partial payments made by the borrower that the lender accumulates as well as additional full payments. Other commenters recommended clarifying that a lender's determination of whether a prepayment amount equals one or more full scheduled payments should be made only after late charges and collection costs have been paid. These same commenters also requested that an additional sentence be added to (b)(2)(ii) to clarify that the required notice to the borrower that the borrower's due date has been advanced did not apply to borrowers making prepayments while they are in an in-school, grace, deferment, or forbearance period because they do not have a scheduled due date to which a future payment would be applied. Many commenters disagreed strongly with the requirement in (b)(2)(ii) that a lender provide the borrower with a notice informing the borrower that the payments have been applied to future installments and reminding the borrower of the repayment obligation and the next scheduled due date. The commenters believe that this requirement is overly prescriptive and burdensome to lenders and that it is unnecessary to routinely notify the borrower that the due date has been advanced. They also believe that a separate notification of this nature outside the normal billing process is confusing to borrowers, especially if the lender is generating them routinely to a borrower who continues to submit additional full payments without instructions for their handling. Many of these commenters recommended that a lender be provided the alternative of providing this information through the use of the billing statement or coupon book rather than providing a separate notification after the funds have been applied as the regulation proposes. They indicated that borrower coupon books and billing statements are already being used to provide this kind of information.

Discussion: The Secretary disagrees with the one commenter that recommended that the payment application instruction in (b)(1) should be modified to clarify that a lender may apply payments in any order to late charges, collection costs, outstanding accrued interest and principal. The language on payment application was modified, at the request of lenders, in the FFEL regulations published on December 18, 1992 to clarify that a lender had the option to apply payments or prepayments to outstanding late charges, collection costs, and outstanding accrued interest before applying the remainder to principal. The Secretary believes that the provision as currently written provides lenders with the necessary flexibility in applying payments and is consistent with how the Secretary is applying payments in the Direct Loan Program.

The Secretary also disagrees that the treatment of additional full payments submitted without instructions from the borrower for their handling (e.g., multiple payment coupons enclosed with the check, a written note on the billing statement or other written instructions, or oral instructions to the lender documented in the borrower's file) should be at the option of the lender. The Secretary now believes that, absent the borrower's instruction, the most responsible approach to handling additional full payments, and the likely intent of the borrower in the majority of cases, is to apply that amount to future installment payments on the loan and to advance the borrower's next scheduled due date. In many instances, this approach will protect a borrower who has submitted a large prepayment to cover a period when he or she will not be available to make the normally scheduled payments from entering a delinquent status. Mandating this treatment of such prepayments by lenders also provides for a consistent, standardized approach for all borrowers and is consistent with the Secretary's treatment of additional full payments submitted without borrower instructions in the Direct Loan program. The Secretary also wishes to clarify that some commenters' interpretation that the provisions in (b)(2)(ii) apply to accumulated partial payments received over time from the borrower without instructions is incorrect. The Secretary believes that a lender should only interpret that the borrower's intent, absent instructions, is to apply the excess payments to future installments if the prepayment amount submitted is at least one additional full payment. The Secretary does not believe that this is generally the borrower's intent when a borrower submits small additional amounts in excess of the scheduled payment amount. The Secretary expects these partial payment amounts, unless a lender receives specific instructions from the borrower directing the lender to accumulate them and eventually apply them to a future installment, to be applied to outstanding principal (unless the borrower has outstanding late or collection charges or outstanding accrued interest to which the lender wishes to apply the partial payment before applying the remainder to principal, as provided for under (b)(1) of this section) with no advancement of the borrower's next scheduled due date. The Secretary agrees that the determination of whether the excess payment amount is sufficient to require the handling specified in (b)(2)(ii) should be made after any late or collection charges and outstanding interest are taken care of but does not believe that this needs to be clarified in the regulations. The Secretary has made it clear that the payment application provisions in (b)(1) apply to all payments, including prepayments, so the Secretary believes any further clarification in the regulations is unnecessary. The Secretary agrees with the many commenters who recommended that the Secretary allow the use of payment coupons and billing statements as alternatives to the borrower notification required in (b)(2)(ii), provided the borrower is effectively notified of the lender's handling of the excess payment amounts and the advancement of the borrower's next scheduled due date. The Secretary also agrees that notification of the advancement of the payment due date is inappropriate for borrowers who make prepayments without instructions during in-school, grace, deferment, and forbearance periods when no payments are due.

Changes: The regulations have been revised in section 682.209(b)(2)(ii) to allow a lender to use a billing statement or a payment coupon book to provide information to the borrower on how the lender will treat additional full payment amounts if the borrower submits one or more additional payments without instructions to the lender as to their handling. The Secretary believes that a

prominent standard statement on each billing statement or in the payment coupon book informing the borrower that the lender will apply the payments to future installments and will advance the borrower's next scheduled payment due date consistent with the number of additional full payments received is comparable to the separate notification the lender may send after receipt of such additional payments. A sentence has also been added to this provision to clarify that information related to advancing the borrower's scheduled payment due date need not be provided if the borrower makes the prepayment during an in-school, grace, deferment, or forbearance period.

Section 682.210 Deferment

Comments: Many commenters objected to the proposed clarifying language that would restrict a defaulted borrower's eligibility for deferment, as a result of arrangements made with the holder of the loan, to the period up to the lender's filing of a default claim with the guaranty agency. Many of these commenters felt strongly that a lender should have the maximum flexibility in working with a borrower, at least up until the default claim is paid by the guaranty agency, to avert the claim payment, the point at which the borrower is subject to adverse consequences of the default and the default becomes a cost to the federal government. These commenters felt this more restrictive language would severely hamper supplemental preclaims assistance efforts of guaranty agencies that take place during this period. A couple of these commenters recommended that the clarifying language be revised to allow a lender to retrieve a loan from a guaranty agency even after default claim payment if satisfactory arrangements can be made with the borrower. One commenter recommended that the provision be revised to provide that a borrower is not eligible for deferment after default unless the borrower's eligibility for the deferment began prior to the default or, if that is not the case, unless the borrower makes satisfactory repayment arrangements with the lender prior to guaranty agency payment of the default claim. Another commenter recommended that language be included in this provision that clarifies that a lender's granting of a deferment after the filing of the default claim is at the lender's discretion. Several commenters recommended eliminating the word ''repayment'' from the phrase ''satisfactory repayment arrangements'' in order to clarify that the payment arrangements made with the holder for the purposes of this provision need only be acceptable to the holder, as opposed to meeting the statutory requirement for a borrower who is in default to regain eligibility for additional Title IV student assistance. Another commenter recommended that the Secretary retain the current regulatory language because the commenter interprets the provision as allowing a borrower in default to be entitled to a deferment if satisfactory repayment arrangements are made with the holder, regardless of whether the holder is a lender, a guaranty agency, or the Secretary.

Discussion: The Secretary believes that clarification of this provision is necessary because, as currently written, it suggests that a borrower who has defaulted on the repayment of a loan and whose loan is held by a guaranty agency or the Secretary can become eligible for deferment of repayment on that loan by making satisfactory repayment arrangements as that term is defined for regaining eligibility for Title IV student assistance. This has never been the Secretary's interpretation of the law with regard to deferment eligibility. The HEA excludes defaulted borrowers from certain program benefits, a major one of these being deferments. However, through this regulatory provision, lenders have always had the ability, at their option, to make payment arrangements with a borrower even after 180 days of delinquency in order to avert a default claim. After a guaranty agency has paid a claim, however, a borrower can regain eligibility for deferment on that loan only through loan rehabilitation or lender repurchase of that loan. A borrower who makes satisfactory repayment arrangements with a guaranty agency to regain eligibility for Title IV student assistance, as provided for under section 428F(b) of the HEA, does not regain deferment eligibility on that defaulted loan that remains with the agency. Borrowers are expected to continue to make payments on that loan after the six required payments necessary to regain eligibility, but guaranty agencies are strongly encouraged to provide forbearance to such borrowers on the loan during the borrower's in-school period. Only if the loan is successfully rehabilitated or a lender repurchase is arranged does the borrower regain deferment eligibility. After consideration of the comments, the Secretary has decided that lenders and guaranty agencies should be allowed to work with defaulted borrowers to avert default claim payment through the granting of deferments and other administrative methods provided in the FFEL program until the guaranty agency pays the claim. This provides borrowers with ample opportunity to avert the consequences of default. The Secretary does not believe this provision should apply after default claim payment unless the lender determines the default claim was filed in error and recalls the loan from the agency. At the point a default claim is paid, Federal taxpayer funds have been used to repay the borrower's debt and the guaranty agency has lost the use of that money for other program purposes. The Secretary agrees that the phrase ''satisfactory repayment arrangements'' needs to be modified to avoid any misinterpretation of what is required for purposes of this provision. The term satisfactory repayment arrangements, as currently defined, is intended to apply only to the requirements a defaulted borrower must meet to regain Title IV eligibility. For purposes of this provision, the arrangements must only be acceptable to the lender and are left to the lender and borrower to work out. The Secretary also agrees that a lender's acceptance of payments or granting of deferments or forbearance as part of satisfactory arrangements to avert a default claim payment at the post-180 or post-240 day stage of delinquency are strongly encouraged, but optional on the part of the lender.

Changes: A change has been made. This provision of the regulations has been revised to provide for deferment eligibility of a defaulted borrower up to the payment of a default claim on the loan if the lender agrees to make payment arrangements with the borrower. The phrase ''satisfactory repayment arrangements'' has been revised to read ''payment arrangements acceptable to the lender.''

Section 682.211 Forbearance

Comments: All commenters agreed with the Secretary's proposal to allow lenders to apply an administrative forbearance in situations when a borrower ends a period of deferment in a delinquent status. Many commenters also recommended that the provision be expanded to include those borrowers ending a period of mandatory forbearance in a delinquent status. Another commenter recommended the addition of the phrase ''until the next due date is established in accordance with section 682.209(a)(3)(ii)(B)'' at the end of the provision.

Discussion: The Secretary agrees with the commenters.

Changes: A change has been made to include borrowers who have ended a period of mandatory forbearance in a delinquent status and the recommended

phrase related to next payment due date has been added.

Section 682.401(b)(10)(vi)(B) Basic Program Agreement

Comments: Several commenters requested clarification as to whether the amount of the insurance premium to be returned was to be proportional in instances where a school refunds a portion of a loan that is less than a full disbursement to a lender, and the lender must refund the insurance premium to the borrower. Many commenters requested that the phrase ''a portion of the loan'' be replaced with the phrase ''full disbursement of the loan'' to reflect the fact that the Secretary was maintaining his existing policy that such a refund is necessary only if at least a full disbursement of the loan is returned. Another commenter requested that the regulations be revised to be consistent with the Direct Loan program by requiring that the refund of the insurance premium be applied to the borrower's loan balance rather than be refunded to the borrower. Other commenters suggested that the phrase ''within 120 days of disbursement'' be inserted to clarify the timeframe during which the refund of the insurance premium must be done.

Discussion: The Secretary clarifies that the lender should pro-rate the insurance premium fee. The Secretary also agrees that the refunds of the insurance premium should be refunded through application to the borrower's account, not a cash refund to the borrower. The Secretary does not agree that reference to ''within 120 days of disbursement'' should be inserted in section 682.401(b)(10)(vi)(B)(1) because the Secretary believes that the timing of the school's refund to the lender on behalf of the student should not prevent the borrower from receiving the benefit of the refund of the insurance premium.

Changes: The regulations have been revised to reflect that a proportional amount of the insurance premium should be refunded if the refund is less than the amount of a loan disbursement and that a refund for this purpose is an application against the borrower's loan account by the lender.

Section 682.402 (l)(1) Death, Disability, Closed School, False Certification and Bankruptcy Discharge

Comments: Many commenters agreed with the concept of the proposed regulations but requested that the regulations be revised to clarify that all payments should be returned to the sender, as is the case in the Direct Loan program, and that any notification of no further obligation to repay a loan discharged in bankruptcy or loan cancelled due to the borrower's total and permanent disability should be sent to the borrower. Many comments also recommended that the regulations be revised to provide that the lender return payments received only after the guaranty agency has paid the claim. The commenters were concerned that until the agency has reviewed and made a determination on the lender's claim, it is risky to refund payments.

Discussion: The Secretary agrees with the commenters that lenders and guaranty agencies should return payments on all discharged loans to the sender consistent with the handling of discharges in the Direct Loan program. However, the notification that there is no further obligation to repay the loan should always be directed to the borrower. The Secretary also agrees that payments received on discharged loans should not be returned until the discharge claim is paid by the guaranty agency.

Changes: The regulations have been revised to reflect the commenters' recommendations.

Section 682.412(c) Consequences of the Failure of a Borrower or Student To Establish Eligibility

Comments: Most commenters supported the Secretary's clarification to allow a borrower 30 days from the date a final demand letter is *mailed* by the lender to repay a loan amount that the borrower was ineligible to receive. One commenter disagreed with the proposal, stating that in a large agency it may be impossible to verify the date the letter is mailed unless the borrower retains the envelope with the post office cancellation stamp on it.

Discussion: The Secretary notes that lenders and guaranty agencies are currently required to maintain records establishing the dates certain collection notices are mailed (as required by 34 CFR 682.410(b)(1)(vi) and 682.411). Therefore, the Secretary believes that lenders will be able to determine when a letter is mailed for this purpose. The Secretary is concerned by the commenter's claim that large agencies are not tracking these dates and will evaluate whether reviews of lender operations in this area are necessary.

Changes: None.

Section 682.603 Certification by a Participating School in Connection With a Loan Application

Comments: All commenters agreed with the Secretary's proposal that in loan proration situations where a student is enrolled in a program of study with less than a full academic year remaining, the school will not be required to recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school certifies the loan. One commenter suggested the insertion of the phrase ''or the student in the case of a PLUS loan'' in section 682.603(g) of the regulations because the commenter was concerned that in the case of the PLUS loan, the school would likely assess the dependent student any fee since they would be unable to assess the parent borrower.

Discussion: The Secretary agrees with the minor technical correction to section 682.603(g).

Change: The phrase recommended by the commenter has been inserted in section 682.603(g).

Section 682.605 Determining the Date of a Student's Withdrawal

Comments: All the commenters agreed with the Secretary's proposal to reinsert into the regulations the guidance on determining the date of a student's withdrawal in the case of a summer period of nonenrollment (''summer break'') that had been inadvertently deleted from the regulations. One commenter suggested the provision be revised to reference the fact that the summer break could include summer terms during which the school offers classes, but most students are generally not required to attend. One commenter recommended that the ''summer break'' approach be extended to other periods of nonenrollment during the regular academic year. Several commenters also pointed out that an earlier revision of the regulations in section 682.607(c), governing the school's timeframe for making a refund to a lender for a student who has withdrawn, could create, in the case of unofficial withdrawals, unintended potential liability for schools. The commenters recommended that the 60 days for a timely refund be based on the date the school determines that a student has unofficially withdrawn as it was formerly, not the date of withdrawal, which may have taken place weeks, if not months, before the school determines the student has dropped out. The commenters also suggested that section 682.607(c)(1) also be revised to clarify what constitutes timely payment to the lender under the ''summer break'' language of section 682.605.

Discussion: The Secretary does not agree that the approach to determining student withdrawal following a period of summer nonenrollment should be more broadly applied to other periods of nonenrollment during the academic

year. Since this information is used to convert a borrower to repayment in a timely manner, the Secretary believes it is not generally appropriate, except in connection with a summer period, to delay the school's determination of student withdrawal. The Secretary agrees that the summer period of nonenrollment can include summer terms during which the school offers classes, but most students are generally not expected to attend. The Secretary also agrees that the technical changes to section 682.607(c)(1) are needed for successful coordination between section 668.22(j) of the General Provisions regulations and sections 682.605 and .607 of the FFEL program regulations.

Change: None.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: November 24, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.200 [Amended]

2. Section 682.200, paragraph (b) is amended by revising the definition of ''Satisfactory repayment arrangement'' by adding at the end of the paragraph (1), ''A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.'' and by removing in paragraph (2) the reference to ''34 CFR 682.201(c)(iii)(C)'' and adding, in its place, ''34 CFR 682.201(c)(1)(iii)(C).''

3. Section 682.201 is amended by revising paragraph (c)(1)(iii)(C) to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(C) In a default status and has either made satisfactory repayment arrangements as defined in section 682.200(b)(2) or has agreed to repay the consolidation loan under the income-sensitive repayment plan described in § 682.209(a)(6)(viii).

* * * * *

4. Section 682.207 is amended by revising paragraph (c) introductory text; adding a new paragraph (c)(4) and revising paragraphs (d)(1) and (d)(2)(iii) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(c) A lender shall disburse any Stafford or PLUS loan as follows:

* * * * *

(4) If the first disbursement of a loan is scheduled to be made on the date of the second scheduled disbursement, the loan may be disbursed in a single installment. This date may be on the earlier of—

(i) The midpoint of the loan period for which the loan was made; or

(ii) A date which coincides with the beginning of the next scheduled term as provided for in the exception clause of paragraph (c)(3) of this section.

(d)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended, in accordance with paragraphs (d) (2) and (3) of this section.

(2) * * *

(iii) In exceptional circumstances within 30 days after the period described in paragraph (d)(2)(ii) of this section. Between the 61st and up through the 90th day, a lender may presume that exceptional circumstances exist and make the disbursement. The school shall review the borrower's circumstances and either determine that exceptional circumstances exist or return the loan proceeds to the lender. The school shall document the exceptional circumstances in the student's file.

* * * * *

5. Section 682.209 is amended by revising paragraph (b) to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(b) *Payment application and prepayment.* (1) The lender may credit the entire payment amount first to any late charges accrued or collection costs and then to any outstanding interest and then to outstanding principal.

(2)(i) The borrower may prepay the whole or any part of a loan at any time without penalty.

(ii) If the prepayment amount equals or exceeds the monthly payment amount under the repayment schedule established for the loan, the lender shall apply the prepayment to future installments by advancing the next payment due date, unless the borrower requests otherwise. The lender must either inform the borrower in advance using a prominent statement in the borrower coupon book or billing statement that any additional full payment amounts submitted without instructions to the lender as to their handling will be applied to future scheduled payments with the borrower's next scheduled payment due date advanced consistent with the number of additional payments received, or provide a notification to the borrower after the payments are received informing the borrower that the payments have been so applied and the date of the borrower's next scheduled payment due date. Information related to next scheduled payment due date need not be provided to borrower's making such prepayments while in an in-school, grace, deferment, or forbearance period when payments are not due.

* * * * *

6. Section 682.210 is amended by revising paragraph (a)(8) to read as follows:

§ 682.210 Deferment.

(a) * * *

(8) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements acceptable to the lender prior to the payment of a default claim by a guaranty agency.

* * * * *

7. Section 682.211 is amended by adding a new paragraph (f)(9) to read as follows:

§ 682.211 Forbearance.

* * * * *

(f) * * *

(9) For a period of delinquency that may remain after a borrower ends a period of deferment or mandatory

forbearance until the next due date is established in accordance with § 682.209(a)(3)(ii)(B).

* * * * *

8. Section 682.401(b)(10)(vi)(B), is revised to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(10) * * *

(vi) * * *

(B) The premium or an appropriate prorated amount of the premium must be refunded by application to the borrower's account if—

(*1*) The loan or a portion of a loan is returned by the school to the lender;

(*2*) Within 120 days of disbursement, the loan is repaid in full;

(*3*) Within 120 days of disbursement, the loan check has not been negotiated; or

(*4*) Within 120 days of disbursement, the loan proceeds disbursed by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school.

* * * * *

9. Section 682.402 is amended by revising paragraph (c)(3) and by revising paragraphs (l)(1) and (l)(2) as set forth below; by amending paragraph (l)(3) by replacing the reference to ''(l)(2)'' with ''(l)(1).''

§ 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

* * * * *

(c) * * *

(3) After being notified that the guaranty agency has paid a disability discharge claim, the lender shall return to the sender any payments received by the lender after the date that the borrower became totally and permanently disabled as certified by the physician. At the same time that the lender returns the payment, it shall notify the borrower that there is no obligation to repay a loan discharged on the basis of disability.

* * * * *

(l) * * *

(1) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been discharged in bankruptcy on which the Secretary previously paid a bankruptcy claim, the guaranty agency shall return 100 percent of these payments to the sender. The guaranty agency shall promptly return, to the sender, any payment on a cancelled or discharged loan made by the sender and received after the Secretary pays a closed school or false certification claim. At the same time that the agency returns the payment, it shall notify the borrower that there is no obligation to repay a loan discharged on the basis of death, disability, bankruptcy, false certification, or closing of the school.

(2) The guaranty agency shall remit to the Secretary all payments received from a tuition recovery fund, performance bond, or other third party with respect to a loan on which the Secretary previously paid a closed school or false certification claim.

* * * * *

10. Section 682.412 is amended by revising paragraph (c) to read as follows:

§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.

* * * * *

(c) In the final demand letter transmitted under paragraph (a) of this section, the lender shall demand that within 30 days from the date the letter is mailed the borrower repay in full any principal amount for which the borrower is ineligible and any accrued interest, including interest and all special allowance paid by the Secretary.

* * * * *

11. Section 682.603 is amended by adding a new paragraph (f)(4) and by revising paragraph (g) to read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(f) * * *

(4) In prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school certifies the loan.

(g) A school may not assess the borrower, or the student in the case of a PLUS loan, a fee for the completion or certification of any FFEL Program form or information or for providing any information necessary for a student or parent to receive a loan under part B of the Act or any benefits associated with such a loan.

12. Section 682.604 is amended by removing paragraph (e)(3), redesignating paragraph (e)(4) as paragraph (e)(3), in redesignated paragraph (e)(3), in the introductory text, remove ''the lender or guaranty agency has not informed the school that it prohibits a late disbursement as permitted by § 682.207(d)(2)(i), and if''.

13. Section 682.605 is revised to read as follows:

§ 682.605 Determining the date of a student's withdrawal.

(a) Except in the case of a student who does not return for the next scheduled term following a summer break, which includes any summer term(s) in which classes are offered but students are not generally required to attend, a school shall follow the procedures in 34 CFR 668.22(j) for determining the student's date of withdrawal. In the case of a student who does not return from a summer break, the school must follow the procedures in 34 CFR 668.22(j) except that the school shall determine the student's withdrawal date no later than 30 days after the first day of the next scheduled term.

(b) The school shall use the withdrawal date determined under 34 CFR 668.22(j) for the purpose of reporting to the lender the date that the student has withdrawn from the school.

(c) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month, day and year of the withdrawal date.

* * * * *

14. Section 682.607(c) is revised to read as follows:

§ 682.607 Payment of a refund to a lender.

* * * * *

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days of the date that the student officially withdraws, is expelled, or the institution determines that a student has unofficially withdrawn, as determined in accordance with 34 CFR 668.22(j) and § 682.605.

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under 34 CFR 668.22(j), within 30 days of the earlier of the date of expiration of the leave of absence or the date the student notifies the institution that the student will not be returning to the institution after the expiration of an approved leave of absence.

* * * * *

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